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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

Case No. 3997

14 **KHANH PHI NGUYEN**
15 **16166 Mount Baden Powell Street**
Fountain Valley, CA 92708

STATEMENT OF ISSUES

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about June 28, 2010, the Board of Pharmacy, Department of Consumer Affairs
23 received an application for a Pharmacy Technician Registration from Khanh Phi Nguyen
24 (Respondent). On or about June 22, 2010, Khanh Phi Nguyen certified under penalty of perjury
25 to the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on November 22, 2010.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. . . .

5. Section 4300, subdivision (c) of the Code states "The board may refuse a license to any applicant guilty of unprofessional conduct."

STATUTORY PROVISIONS

6. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

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1 7. Section 482 of the Code states:

2 Each board under the provisions of this code shall develop criteria to evaluate
3 the rehabilitation of a person when:

4 (a) Considering the denial of a license by the board under Section 480; or

5 (b) Considering suspension or revocation of a license under Section 490.

6 Each board shall take into account all competent evidence of rehabilitation
7 furnished by the applicant or licensee.

8 8. Section 493 of the Code states:

9 Notwithstanding any other provision of law, in a proceeding conducted by a
10 board within the department pursuant to law to deny an application for a license or to
11 suspend or revoke a license or otherwise take disciplinary action against a person who
12 holds a license, upon the ground that the applicant or the licensee has been convicted
13 of a crime substantially related to the qualifications, functions, and duties of the
14 licensee in question, the record of conviction of the crime shall be conclusive
15 evidence of the fact that the conviction occurred, but only of that fact, and the board
16 may inquire into the circumstances surrounding the commission of the crime in order
17 to fix the degree of discipline or to determine if the conviction is substantially related
18 to the qualifications, functions, and duties of the licensee in question.

19 As used in this section, "license" includes "certificate," "permit," "authority,"
20 and "registration."

21 9. Section 4301 of the Code states:

22 The board shall take action against any holder of a license who is guilty of
23 unprofessional conduct or whose license has been procured by fraud or
24 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
25 not limited to, any of the following:

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27 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
28 deceit, or corruption, whether the act is committed in the course of relations as a
 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

 (l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of a
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction shall
be conclusive evidence only of the fact that the conviction occurred. The board may
inquire into the circumstances surrounding the commission of the crime, in order to
fix the degree of discipline or, in the case of a conviction not involving controlled
substances or dangerous drugs, to determine if the conviction is of an offense
substantially related to the qualifications, functions, and duties of a licensee under this
chapter. A plea or verdict of guilty or a conviction following a plea of nolo

contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

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11. California Code of Regulations, title 16, section 1770 states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(July 20, 2009 Criminal Conviction for Issuance of Check**

3 **With Insufficient Funds on August 1, 2007)**

4 12. Respondent's application for registration as a pharmacy technician is subject to denial
5 under sections 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime
6 that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

7 The circumstances are as follows:

8 a. On or about July 20, 2009, in a criminal proceeding entitled *The State of*
9 *Nevada vs. Khanh P. Nguyen*, in Clark County District Court, case number C256179, Respondent
10 was convicted on his plea of guilty to two felony counts of violating Nevada Revised Statutes
11 205.130, issuance of a check or draft without sufficient money or credit; and Nevada Revised
12 Statutes 193.330, attempt to commit a felony.

13 b. As a result of the conviction, on or about October 22, 2009, Respondent was
14 sentenced to serve six months in the Clark County Detention Center. The detention was
15 suspended and Respondent was placed on informal probation, ordered to pay restitution in the
16 amount of \$55,075.00, and ordered to comply with standard probation terms.

17 c. The circumstances that led to the conviction are that on or about August 1,
18 2007, Respondent drew and knowingly passed a bad check, payable to Caesar's Palace Hotel and
19 Casino in Las Vegas, in the amount of \$50,000. Respondent received cash and gaming chips in
20 exchange for the check. The check was deposited and was returned to Caesar's Palace as unpaid.
21 The casino mailed a certified letter to Respondent demanding payment. Respondent failed to
22 respond to the demand, so the Clark County District Attorney's Office was notified and charges
23 were filed. On June 9, 2009, Respondent was arrested and booked.

24 **SECOND CAUSE FOR DENIAL OF APPLICATION**

25 **(Commission of a Dishonest Act)**

26 13. Respondent's application for registration as a pharmacy technician is subject to denial
27 under sections 480, subdivision (a)(2) of the Code for unprofessional conduct in that on or about

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1 August 1, 2007, Respondent committed an act of dishonesty, fraud and deceit with the intent to
2 substantially benefit himself, as detailed in paragraph 12, above.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Commission of Acts Which if Done by a Licensee Would be**
5 **Grounds for Suspension or Revocation of License)**

6 14. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
7 of the Code in that he committed acts, that if done by a licensed pharmacy technician, would be
8 grounds for suspension or revocation of the license. The circumstances are as follows:

9 a. On or about July 20, 2005, as detailed in paragraph 12, above, Respondent
10 was convicted of a crime substantially related to the qualifications, functions, and duties of a
11 licensed pharmacy technician, in violation of section 4301, subdivision (l) of the Code.

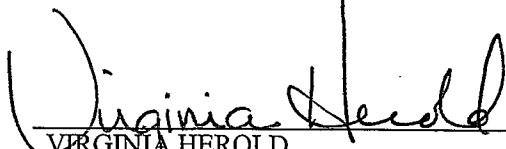
12 b. On or about August 1, 2007, as detailed in paragraph 12, above, Respondent
13 committed an act involving moral turpitude, dishonesty, fraud, and deceit in violation of section
14 4301, subdivision (f) of the Code.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Pharmacy issue a decision:

- 18 1. Denying the application of Khanh Phi Nguyen for a Pharmacy Technician
19 Registration;
20 2. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 6/2/11

23 
24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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